

TO: Commissioner of Patents P.O. Box 1450 Alexandria, VA 22313-1450 or Commissioner of Trademarks P.O. Box 1451 Alexandria, VA 22313-1451	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Colorado on the following **PATENT**

DOCKET NO. 06-cv-00445 LTB-PAC	DATE FILED 3/13/06	U.S. DISTRICT COURT FOR THE DISTRICT OF COLORADO
PLAINTIFF <div style="text-align: center;">eSoft, Inc.</div>		DEFENDANT <div style="text-align: center;">SonicWALL, Inc.</div>
PATENT OR	DATE OF PATENT	HOLDER OF PATENT OR TRADEMARK
1 6,961,773		Please see copy of Complaint attached hereto
2		
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT	<i>Order 12/17/2008</i>
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CLERK GREGORY C. LANGHAM	(BY) DEPUTY CLERK <i>Linda Kahoe</i>	DATE 1/9/2009
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 06-cv-00445-PAB-KLM

eSOFT, INC., a Delaware Corporation,

Plaintiff,

v.

SONICWALL, INC., a California Corporation,

Defendant.

**JOINT REPORT REGARDING THE STATUS OF THE CASE AND THE INTER
PARTES REEXAMINATION OF U.S. PATENT NO. 6,961,773**

Pursuant to an Order of this Court dated November 24, 2008 (Docket No. 73), the parties, through their respective counsel, hereby submit this report regarding the status of the case and the *Inter Partes* Reexamination of U.S. Patent No. 6,961,773 ("the '773 patent").

Plaintiff eSoft, Inc. ("eSoft") initiated this action on March 13, 2006, by filing a complaint alleging that SonicWALL infringes the '773 patent. At approximately the same time, eSoft filed separate complaints against five other parties, each complaint alleging infringement of the '773 patent. Those complaints resulted in separate actions against the accused infringers, including Case No. 1:06-cv-EWN-PAC, against defendant Blue Coat Systems ("Blue Coat"); and Case No. 1:06-cv-EWN-MJW, against defendant St. Bernard Systems, Inc ("St. Bernard").

On January 8, 2007, Blue Coat and St. Bernard filed a Request for *Inter Partes* Reexamination with the U.S. Patent and Trademark Office. Blue Coat and St. Bernard requested that the USPTO reexamine the '773 patent in light of eighteen prior art references, and offered arguments that all eight claims of the '773 patent are invalid based on those references.

SonicWALL did not take part in the Request for *Inter Partes* Reexamination. Both Blue Coat and St. Bernard have reached settlement with eSoft and are no longer involved in the *Inter Partes* Reexamination.

On February 12, 2007, the Court granted SonicWALL's motion to stay this action pending the outcome of the *Inter Partes* Reexamination proceedings (Docket No. 67). SonicWALL and eSoft have not engaged in any communication with each other since this case was stayed.

The USPTO granted the Request for *Inter Partes* Reexamination on March 23, 2007 (Application No. 95/000211) and indicated that an office action would follow in due course. The USPTO issued a non-final office action on September 15, 2008, rejecting all claims of the '773 patent as anticipated by numerous prior art references. In particular, the Examiner rejected all eight claims under 35 U.S.C. § 102(b) as being anticipated by each of three separate references; rejected all eight claims under 35 U.S.C. § 102(a) and (e) as being anticipated by each of two other references; and rejected numerous individual claims as being anticipated by three additional references.

eSoft filed its response to the office action on November 25, 2008. The Examiner is currently considering that response, and the parties are unable to predict when the Examiner will take further action.

Dated: December 10, 2008

Respectfully submitted,

eSOFT, INC., Plaintiff

By: s/ Terence P. Boyle

Terence P. Boyle
Boyle/Apelman PC
1775 Sherman Street
Suite 1375
Denver, Colorado 80203
Telephone: (303) 863-8900
Fax: (303) 863-0063
Email: tboyle@ba-lawyers.com

John P. Passarelli
Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102-2186
Telephone: (402) 346-6000
Facsimile: (402) 346-1148
Email: john.passarelli@kutakrock.com

Attorneys for Plaintiff eSoft, Inc.

SONICWALL, INC., Defendant

s/ S. Michael Song
S. Michael Song
WILSON SONSINI GOODRICH & ROSATI PC
650 Page Mill Road
Palo Alto, CA 94304
Telephone: (650) 493-9300
Facsimile: (650) 565-7222
msong@wsgr.com

Hugh Q. Gottschalk
Wheeler Trigg Kennedy LLP
1801 California Street, Suite 3600
Denver, Colorado 80202-2617
Telephone: (303) 244-1800
Facsimile: (303) 244-1879
gottschalk@wtklaw.com

Attorneys for Defendant
SonicWALL, Inc.

CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on December 10, 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

- **John Patrick Passarelli**
john.passarelli@kutakrock.com shari.mullennax@kutakrock.com
- **James C. Yoon**
jyoon@wsgr.com abaranski@wsgr.com
- **S. Michael Song**
msong@wsgr.com
- **Hugh Gottschalk**
gottschalk@wtklaw.com hart@wtklaw.com gottesfeld@wtklaw.com
- **Julie M. Walker**
walker@wtklaw.com mcguire@wtklaw.com

s/ Terence P. Boyle
Terence P. Boyle
Boyle/Apelman PC
1775 Sherman Street
Suite 1375
Denver, Colorado 80203
Telephone: (303) 863-8900
Fax: (303) 863-0063

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 06-cv-00445-PAB-KLM

ESOFT, INC.

Plaintiff,

v.

SONICWALL, INC.

Defendant.

ORDER

On February 12, 2007, the Court ordered this case stayed pending the outcome of an *Inter Partes* Reexamination [Docket No. 67]. On December 10, 2008, pursuant to an order of the Court [Docket No. 73], the parties filed a status report in the case [Docket No. 74]. According to that report, the *Inter Partes* Reexamination is ongoing. With no discernible end-date to the reexamination process and any subsequent appeals, it is

ORDERED that this case be administratively closed pursuant to D.C.COLO.LCivR 41.2. The case may be reopened by any party showing good cause.

DATED this 17th day of December, 2008.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge